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EXAMINER	
VAN HANDEL, MICHAEL P	
ART UNIT	PAPER NUMBER
2424	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/896,733	BOWERS, J. ROB	
	Examiner	Art Unit	
	MICHAEL VAN HANDEL	2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 5-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 5-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This action is responsive to an Amendment filed 2/09/2009. Claims **1**, **2**, **5-10** are pending. Claims **1**, **10** are amended. Claims **3**, **4**, **11-54** are canceled.

Response to Arguments

1. Applicant's arguments regarding claims **1** and **10**, filed 2/09/2009, have been fully considered, but they are not persuasive.

Regarding the rejection of claim **10** under 35 USC 101, the applicant argues that the rejection be withdrawn in light of Applicant's amendment limiting the claim to physical storage media. Applicant specifically argues that physical storage media excludes communications connections. The examiner respectfully disagrees. Since a hardwired or wireless communications connection and the signal traveling on the connection function by means of physics, matter, and energy, the examiner notes that they are "physical" computer-readable storage media, as currently claimed. The examiner recommends that Applicant amend the specification to remove the passage describing computer readable media as being communications connections.

Regarding claims **1** and **10**, the applicant argues that the prior art fails to teach or suggest that each request comprises access rights associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers. The examiner respectfully disagrees. As noted in the Office Action below, Suzuki

fails to specifically disclose that each request comprises access rights associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers. McClain et al. discloses a system and method for filtering web-based content by vending it to the client only if the client meets predefined user policies (see Abstract). The clients use unique user names to communicate with a proxy cache server (col. 2, l. 13-24, 61-63). Content is categorized according to a variety of rating schemes into content that is or is not appropriate for specific users (col. 4, l. 52-55). Since the user name is associated with both the receiver making the request and with the particular user of the receiver, the examiner interprets the user name to be "access rights associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers," as currently claimed. McClain et al. discloses that the ratings are applied to the specific users based upon predefined user policies associated with the unique user name (col. 2, l. 61-63). Based upon these preset user policies, a filter either allows return of requested content to the client, or returns a message denying access to the user (col. 6, l. 40-45 & col. 9, l. 52-56). The examiner interprets associating the user name of the communication with the preset user policies to determine access to requested content as "comparing the access rights received in each request and associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers with access and security information stored within a database" and "determining whether access is to be denied or restricted to the real-time streaming media for each of the plurality of receivers and each user of each of the plurality of receivers," as currently claimed. Since McClain et al. discloses returning a message denying access to a user (col. 6, l. 40-45 & col. 9, l. 52-56), the

examiner interprets McClain et al. as teaching "delivering a notice to each receiver and user for which access is to be denied," as currently claimed.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim **10** is rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter. The examiner notes that programs constitute functional descriptive material; however, functional descriptive material is nonstatutory when claimed as descriptive material *per se*. The examiner further notes that the claim recites a physical computer-readable storage medium carrying computer-executable instructions; however the specification defines that the medium can be a communications connection to a computer, either hardwired, wireless, or a combination of hardwired or wireless (p. 16, lines 3-10). The examiner notes that a claim directed to a signal *per se* does not appear to be a process, machine, manufacture, or composition of matter. See **MPEP 2106.01** for guidance.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims **1**, **2**, **6**, and **10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of McClain et al.

Referring to claims **1** and **10**, Suzuki discloses a method/computer program product for providing real-time streaming media from a wide area network to a plurality of receivers in a system having a plurality of receivers and at least one aggregation module; the method comprising the following acts:

(a) receiving by at least one aggregation module one or more requests for real-time streaming media accessible via a wide area network, each of the one or more requests being received from one of the plurality of receivers, each request comprising a unique identifier identifying the particular one of the plurality of receivers making the request, and the aggregation module storing a list comprising each of the unique identifiers identifying each of the plurality of receivers from which a request has been received (col. 5, l. 39-44; col. 18, l. 26-67; col. 23, l. 3-43, 62-67; col. 24, l. 1-15, 19-23; & Figs. 11-15, 17, 18, 20, 24, 25);

(b) after act (a), the at least one aggregation module determining whether the number of requests received is greater than a defined maximum number of requests that maintains a connection rate of a shared network at a preferred level (col. 18, l. 26-31), aggregating a plurality of requests into a single request for a single copy of the real-time streaming media (col. 18, l. 50-67 & col. 19, l. 1-3), and sending the single request for a single copy of the real-time streaming media to the wide area network (the examiner notes that a single unified request is issued to server 20 and the data N is transferred to server 10. The examiner interprets this to be a single request for a single copy of the media)(col. 19, l. 3-8 & Fig. 20);

(c) after acts (b), buffering the single copy of the real-time streaming media at the at least one aggregation module (col. 18, l. 53-58 & col. 19, l. 8-14);

(d) using the buffered single copy of the real-time streaming media, delivering the streaming media to the plurality of receivers (col. 18, l. 1-9, 53-58); and

(e) the aggregation module tracking the activities of the receivers and identifying frequently requested real-time streaming or continuous media (col. 2, l. 31-39; col. 6, l. 19-34; & col. 18, l. 10-16).

Suzuki does not specifically disclose that each request comprise access rights associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers. Suzuki further does not specifically disclose that the aggregation module compares the access rights received in each request and associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers with access and security information stored within a database. Suzuki still further does not specifically disclose determining whether access is to be denied or restricted to the real-time streaming media for each of the plurality of receivers and each user of each of the plurality of receivers. Suzuki also does not specifically disclose delivering a notice to each receiver and user for which access is to be denied. McClain et al. discloses a system and method for filtering web-based content by vending it to the client only if the client meets predefined user policies (Abstract). The clients use unique user names to communicate with a proxy cache server (col. 2, l. 13-24, 61-63). Content is categorized according to a variety of rating schemes into content that is or is not appropriate for specific users (col. 4, l. 52-55). The ratings are applied to the specific users based upon predefined user

policies associated with the unique user name (col. 2, l. 61-63). Based upon the preset user policies, a filter either allows return of requested content to the client, or returns a message denying access to the user (col. 6, l. 40-45 & col. 9, l. 52-56). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Suzuki to include receiving a unique user name with a request for content, comparing the user name and content request with a set of content rules for the user, and determining whether to allow or deny access to the content, such as that taught by McClain et al. in order to ensure that a particular client can only access information that is authorized (McClain et al. col. 2, l. 36-39).

Referring to claim **2**, the combination of Suzuki and McClain et al. teaches a method as recited in claim 1, wherein the at least one aggregation module is remote from at least one of the plurality of receivers (since the buffers are connected to the terminals, the terminals are remote from the multimedia server)(Suzuki col. 18, l. 1-9, 53-58 & Fig. 20).

Referring to claim **6**, the combination of Suzuki and McClain et al. teaches a method as recited in claim 1, further comprising delivering the streaming media to each of the plurality of receivers by a multicast broadcast (the examiner notes that each buffer may support a plurality of terminals)(Suzuki col. 18, l. 53-58).

3. Claims **5** and **7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of McClain et al. and further in view of Kuhn.

Referring to claims **5** and **7**, the combination of Suzuki and McClain et al. teaches a method as recited in claim 1. The combination of Suzuki and McClain et al. does not specifically teach selecting a media format. Kuhn discloses transcoding multimedia data into

various media formats (i.e., MPEG)(Paragraphs. 1, 23, & 45). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the combination of Suzuki and McClain et al. to include transcoding multimedia data into various media formats, such as that taught by Kuhn in order to allow a greater variety of receivers to use the system.

4. Claims **8** and **9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of McClain et al. and further in view of Imajima et al.

Referring to claims **8** and **9**, the combination of Suzuki and McClain et al. teaches a method as recited in claim 1. The combination of Suzuki and McClain et al. does not specifically teach the use of used and unused channels and identifying when to deliver a single copy of real-time streaming media to the plurality of receivers by at least one of the plurality of unused channels. Imajima et al. discloses a system for determining whether or not the broadcast of a video is to be provided in the full video on demand (FVOD) or near video on demand (NVOD) service, and if there is any available channel for the broadcast (Abstract). A busy state monitoring mechanism determines the busy level by checking if the number of videos being provided is equal to or larger than a threshold value n. If the busy level of the VOD server has exceeded a certain level, then the VOD server is in the busy state, the FVOD service is switched to the NVOD service and the requested video is broadcast in the NVOD service along an available channel (col. 14, l. 6-6-11 & col. 16, l. 30-40). When providing a video in the NVOD service, the NVOD service providing mechanism notifies the set top box (STB) at the subscriber of the NVOD service starting time and of the receiving channel for the video data (col. 15, l. 63-67 & col. 16, l. 1). The STB 220 sets the receiving channel to the channel specified according to

the channel information (col. 13, l. 10-13). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the combination of Suzuki and McClain et al. to include utilizing multiple used and unused channels, identifying when to provide a requested video through the unused channels, and switching to the receiving channel for the video, such as that taught by Imajima et al. in order to provide a VOD service with easy operation and reduced load on the cable television (CATV) center (Imajima et al. col. 4, l. 10-11, 17-20).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL VAN HANDEL whose telephone number is (571)272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Kelley/
Supervisory Patent Examiner, Art Unit 2424

MVH